

Report on the

# **Board of Examiners of Mine Personnel**

**Birmingham, Alabama**



## **Department of Examiners of Public Accounts**

50 North Ripley Street, Room 3201

P.O. Box 302251

Montgomery, Alabama 36130-2251

*Ronald L. Jones, Chief Examiner*



**State of Alabama**  
Department of  
**Examiners of Public Accounts**

**Ronald L. Jones**  
Chief Examiner

Telephone (334) 242-9200

FAX (334) 242-1775

*Mailing Address:*  
P.O. Box 302251  
Montgomery, AL 36130-2251

*Location:*  
Gordon Persons Building  
50 North Ripley Street, Room 3201  
Montgomery, AL 36104-3833

October 24, 2007

Senator Larry Dixon  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of **Board of Examiners of Mine Personnel** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Examiners of Mine Personnel**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones  
Chief Examiner

Examiners  
Robin Hutcheson  
Glenn Davis



## CONTENTS

<b>PROFILE.....</b>	<b>1</b>
<b>Purpose/Authority.....</b>	<b>1</b>
<b>Board Characteristics .....</b>	<b>1</b>
<b>Operations.....</b>	<b>2</b>
<b>Financial Information.....</b>	<b>4</b>
<b>SIGNIFICANT ITEMS .....</b>	<b>4</b>
<b>STATUS OF PRIOR FINDINGS .....</b>	<b>5</b>
<b>ORGANIZATION .....</b>	<b>6</b>
<b>PERSONNEL .....</b>	<b>6</b>
<b>PERFORMANCE CHARACTERISTICS .....</b>	<b>6</b>
<b>REGULATION IN CONJUNCTION WITH OTHER ENTITIES .....</b>	<b>8</b>
<b>SMART BUDGETING.....</b>	<b>8</b>
<b>FINANCIAL INFORMATION .....</b>	<b>9</b>
<b>Schedule of Fees .....</b>	<b>9</b>
<b>Comparison of Collections and Expenses .....</b>	<b>9</b>
<b>Collections vs Expenses - Chart.....</b>	<b>10</b>
<b>QUESTIONNAIRES .....</b>	<b>13</b>
<b>Board Member Questionnaire .....</b>	<b>13</b>
<b>Certificate Holder Questionnaire .....</b>	<b>13</b>
<b>APPENDICES .....</b>	<b>16</b>
<b>Statute .....</b>	<b>16</b>
<b>Board Members.....</b>	<b>22</b>
<b>RESPONSE TO SIGNIFICANT ITEMS .....</b>	<b>23</b>



# **PROFILE**

## **Purpose/Authority**

The Board of Examiners of Mine Personnel examines and certifies coal mine foremen and fire bosses. Additionally, the board receives and investigates complaints, issues written reprimands and revokes certificates for cause. The board operates under the *Code of Alabama 1975*, Sections 25-9-8 through 25-9-18. Federal law requires that fire bosses and mine foremen must be certified by the states in which they mine. In the absence of such certification, the federal government is authorized to certify. The board's administrative functions are performed by employees of the Mine Safety and Inspection Section of the Mining and Reclamation Division of the Department of Industrial Relations.

## **Board Characteristics**

<b>Members</b>	Eight (8)  <i>Code of Alabama 1975</i> , Section 25-9-9
<b>Term</b>	3 year staggered terms with no board member serving more than two consecutive terms.  <i>Code of Alabama 1975</i> , Section 25-9-9
<b>Selection</b>	Appointed by the Governor.  <i>Code of Alabama 1975</i> , Section 25-9-9
<b>Qualifications</b>	Each must hold an Alabama mine foreman certificate. <ul style="list-style-type: none"><li>• The chief/head mine inspector (Ex officio)</li><li>• Three must be active practical miners.</li><li>• Three must be operators of coal mines.</li><li>• One must be a practicing mining engineer.</li></ul> <i>Code of Alabama 1975</i> , Section 25-9-9
<b>Racial Representation</b>	No statutory requirement. One Black member currently sits on the board.
<b>Consumer Representation</b>	No statutory requirement.
<b>Geographic Representation</b>	No statutory requirement.

<b>Compensation</b>	Members other than ex-officio members receive \$10.00 per day compensation for each day's attendance at board meetings. Members are also be entitled to the same per diem and travel allowance provided by law for state employees for each day's attendance at meetings of the board. <i>Code of Alabama 1975, Section 25-9-9</i>
---------------------	---

### **Operations**

<b>Administration</b>	Administration of the operations of the board is among the duties of the Department of Industrial Relations, Mining and Reclamation Division (Michael Skates, Director) and further of the Mine Safety and Inspection Section (Gary Keyes, Chief Inspector).				
<b>Location</b>	11 West Oxmoor Rd. S-201 Birmingham, AL 35209				
<b>Examinations</b>	Given twice a year in April and October. The three-day examination is prepared, proctored and graded by the board.				
	<b>Fiscal Year</b>	<b>Examined</b>	<b>Passed</b>	<b>Failed</b>	<b>Pass Rate</b>
	2002-2003	30	27	3	90.00%
	2003-2004	43	33	10	76.74%
	2004-2005	70	50	20	71.43%
	2005-2006	47	33	14	70.21%
	2006-2007	51	41	10	80.39%
<b>Licensees</b>	<u>Certified Mine Foreman</u> <ul style="list-style-type: none"><li>• Citizen of the United States;</li><li>• At least 23 years old;</li><li>• Four (4) years practical mining experience or three (3)years practical experience in or around coal mines and be a graduate of a school accredited by the American Association of Universities or have satisfactorily completed an associate degree program in mine technology at an approved state trade school or university;</li><li>• Present with application an affidavit of meeting the foregoing requirements and being of good moral character and known temperate habits, signed by three reputable citizens, at least one of whom must be the holder of a mine foreman's certificate; and</li><li>• Present with application an affidavit that the applicant is not a member of any political party or organization that advocates the overthrow of the government of the United States by force.</li></ul> <p><i>Code of Alabama 1975, Section 25-9-11</i></p>				



	<p><u>Certified Fire Boss</u></p> <ul style="list-style-type: none"> <li>Must meet the same qualifications as those for a mine foreman; with the exception that three years' practical experience in or around coal mines may be substituted for the requirements of subdivision (3) of the <i>Code of Alabama 1975</i>, Section 25-9-11, (Have had four years practical mining experience or have had three years practical experience in or around coal mines and be a graduate of a school accredited by the American Association of Universities or have satisfactorily completed an associate degree program in mine technology at an approved state trade school or university); and at least one of the persons signing the affidavit must be holder of a fire boss's or a mine foreman's certificate.</li> </ul> <p><i>Code of Alabama 1975</i>, Section 25-9-12</p>
<b>Renewals</b>	<p>None - Certificates remain in effect until revoked, cancelled or voluntarily surrendered. There is no provision for renewal.</p> <p><i>Code of Alabama 1975</i>, Section 25-9-15</p>
<b>Reciprocity</b>	No statutory authority
<b>Continuing Education</b>	No statutory requirement
<b>Employees</b>	Gary D. Key, Chief Mine Safety and Inspection, and Susan Lollar ASA III, both full-time classified merit system employees of the Mine Safety Section of the Department of Industrial Relations, work on board related activities approximately one month, twice a year.
<b>Legal Counsel</b>	Legal counsel is provided by the Department of Industrial Relations' staff attorney, Frank Marsh.
<b>Subpoena Power</b>	None
<b>Internet Presence</b>	None before this review. The Board of Examiners of Mine Personnel is a part of the Mine Safety and Inspection Section of the Mining And Reclamation Division of the Department of Industrial Relations. Mine Safety & Inspections is represented on the DIR Website. The Board of Examiners of Mine Personnel currently appears only in the recently included statement, "Mine foreman and fire boss certifications are administered through the Board of Examiners of Mine Personnel and production records are kept for coal and other minerals mined in Alabama" as a part of the description of the Mine Safety and Inspection Section.
<b>Attended Board Member Training</b>	No one representing the board or employed on the board's behalf has attended board member training.

### **Financial Information**

<b>Source of Funds</b>	General Fund appropriations Note: Fees collected by the board are deposited into the General Fund and are not available for use by the board.
<b>State Treasury</b>	Yes - Operations are funded through a Department of Industrial Relations' General Fund Account in the State Treasury
<b>Unused Funds</b>	Revert to the State Treasury at year end.

### **SIGNIFICANT ITEMS**

1. **A provision in the Board of Examiners of Mine Personnel's licensing law which requires that an applicant for a certificate as a fire boss or mine foreman must be a United States citizen may be unconstitutional.** The *Code of Alabama 1975*, Section 25-9-11 states, "Each applicant for a mine foreman's certificate of competency shall: (1) be a citizen of the United States..." Enforcement of unconstitutional provisions increases the likelihood of lawsuits against the Board.

The U. S. Supreme Court in re Griffiths, 413 U. S. 717 (1973), held that the exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Also, the U. S. Supreme Court in Examining Board V. Flores De Otero, 426 U. S. 572 (1976) held that "The statutory restriction on the ability of aliens to engage in otherwise lawful private practice of civil engineering is plainly unconstitutional."

2. **The Board's administrative rules do not include a description of acceptable conditions for the voluntary surrender of a certificate.** The *Code of Alabama 1975*, Section 25-9-15(c) states, "In addition to the reasons specified in subsection (b) for revocation of a certificate, a certificate holder may voluntarily surrender his or her certificate upon written request to the board for any reason acceptable to the board, and subsequent approval by the board. **Pursuant to administrative rule, the board shall specify those reasons that are acceptable to the board for the voluntary surrender of a certificate.**"
3. **When requested by the Examiners of Public Accounts, the Ethics Commission was unable to produce filed statements of economic interest for members of the board. The Chief Mine Inspector (ex-officio) was the only member to have filed the statement of economic interest.** The *Code of Alabama 1975*, Section 36-25-1 (24 & 25) states, "(24) Public official. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and **any person appointed to a position at the state, county, or municipal level of government or their instrumentalities**, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."

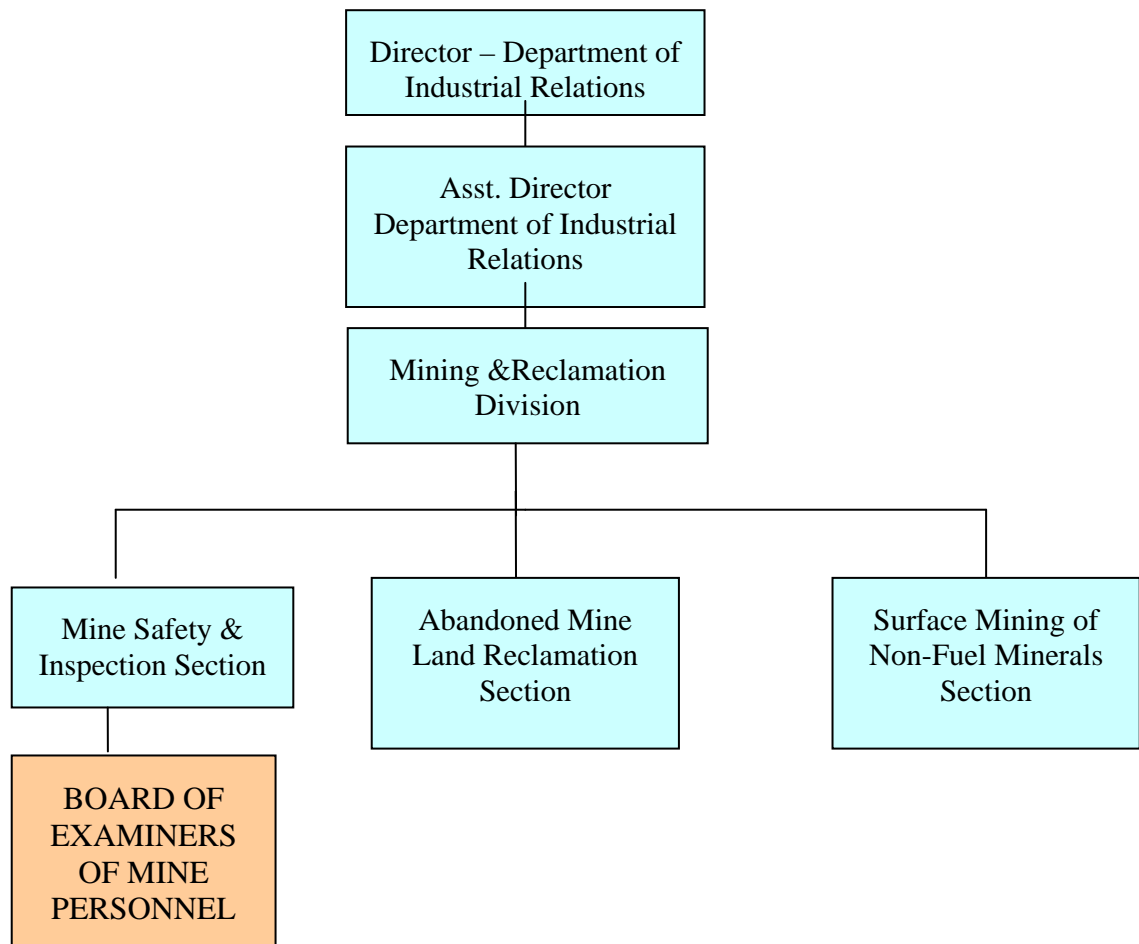
“(25) Regulatory body. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.” The *Code of Alabama 1975*, Section 36-25-14 (a & a4) states, “(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:” “(4) Members of the Alabama Ethics Commission; appointed **members of boards and commissions having statewide jurisdiction** (but excluding members of solely advisory boards).”

4. **Certificate holders do not believe they are adequately informed.** Of the 13 certificate holders who responded to our questionnaire, 10 of the respondents stated they do not feel they are adequately informed of changes to, and interpretations of, board positions, policies, rules, and laws concerning the practice of mine foreman and fire bosses. Because there is no requirement for continued contact with the board beyond issuance of a certificate, addresses of certificate holders on file at the board will eventually become inaccurate and inadequate for notification by mail. The board has no Internet presence from which to distribute information. Of 100 questionnaires sent to fire boss and mine foreman certificate holders, 26 were returned to the Examiners of Public Accounts as undeliverable, and only 13 responded. Certificate holders’ access to impending changes appears limited to review of the Administrative Monthly published by the Legislative Reference Service.
5. **Certificate holders do not believe the law pertaining to mine foreman and fire bosses is adequate.** Of the 13 certificate holders who responded to our questionnaire, 6 responded that they do not believe the Alabama Law pertaining to the regulation of mine foreman and fire bosses is adequate. Their responses ranged from raising the minimum grade requirement for the test to updating antiquated state laws, to annual training for certificate holders.

## **STATUS OF PRIOR FINDINGS**

All prior significant items have been resolved.

## **ORGANIZATION**



The Chief of the Mine Safety and Inspections Section, Gary Key, is the ex officio Chairman of the Board of Examiners of Mine Personnel.

## **PERSONNEL**

The Board of Examiners of Mine Personnel does not employ any personnel. All administrative functions are performed by employees of the Department of Industrial Relations, Mine Safety and Inspection Section. Two employees of the Mine Safety and Inspection Section work a minimal amount of time in preparation for Board meetings; Gary Key, Chief of Mine Safety and Inspection; and Susan Lollar, ASA III.

## **PERFORMANCE CHARACTERISTICS**

### **Complaint Resolution**

The board accepts only written signed complaints. The board follows the *Alabama Administrative Rules* as defined in section 480-3-7-.02

<p><b><u>Initiation of Charges</u></b></p>	<p>Decertification proceedings before the Board of Examiners are initiated by the filing of a charge, which must be in writing and signed. The charge shall contain the name and address of the person against whom the charge is made and a detailed statement of the facts on which the charge is based.</p> <p><i>Alabama Administrative Code</i>, 480-3-7-.02.(1)</p>
<p><b><u>Investigation of Charges</u></b></p>	<p>The charge is filed with the Chief of the Safety and Inspection Section of the Mining and Reclamation Division of the Alabama Department of Industrial Relations.</p> <p>The Chief directs an inspector from the Division of Safety and Inspection to investigate the allegations of the charge and submit a report of his investigation to the Board of Examiners. The investigation of the complaint must report on each allegation of the charge and must state whether the alleged activities were a hazard to the health or safety of the underground miners or were otherwise in violation of the Coal Mine Safety Laws of Alabama.</p> <p><i>Alabama Administrative Code</i>, 480-3-7-.02.(2)</p>
<p><b><u>Evaluation of the Charge</u></b></p>	<p>After receiving the inspector's report, the Board of Examiners review the charges, the inspection report, and other information available to them to determine (1) whether the charges are supported by the inspection report, and (2) whether the charges, if taken as true, state a violation of the Alabama Coal Mine Laws.</p> <ul style="list-style-type: none"> <li>• If the Board determines that the charges, or any part of them, are not supported by the available evidence, or that the charges do not state a violation of the Coal Mine Laws, the Board dismisses the charges, or any unfounded part of the charges.</li> <li>• If the Board determines that the charges, if taken as true, state a violation of the Alabama Coal Mining laws but the act or activity complained of does not merit revocation, cancellation or suspension of one's certificate, then in that event, the Board in its discretion reprimand in writing any or all the parties charged without a formal hearing, unless the reprimanded party or parties within ten (10) days after receipt of the written reprimand, request</li> </ul>

	<p>a formal hearing in writing on the reprimand.</p> <ul style="list-style-type: none"> <li>• If the Board determines by simple majority that the charges merit revocation under the Alabama Coal Mine Laws, then in that event, the Board shall schedule a formal hearing on the charges. .</li> </ul> <p><i>Alabama Administrative Code, 480-3-7-.02.(3)</i></p>
<b><u>Notice of Formal Hearings</u></b>	<p>All charged parties shall have at least 30 days notice of the date of a formal hearing. Said notice shall include a copy of the charges upon which the Board has determined to proceed. The notice to the charged party shall also include a statement of the procedures of the Board of Examiners and the rights the charged party will have at the formal hearing.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(4)</i></p>
<b><u>Complaint Resolution</u></b>	<p>At the conclusion of the hearing, the Board of Examiners shall meet to decide the charges, and a decision shall be rendered within thirty (30) days. The Board of Examiners shall prepare the decision stating findings of fact and conclusion, including the reasons for the Board's determinations on all material issues. The decision shall be in writing and shall be sent to all parties involved. The decision of the Board shall be made by a simple majority of the Board.</p> <p><i>Alabama Administrative Code, 480-3-7-.02.(6)</i></p>

There were no complaints on file.

## **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The Board of Examiners of Mine Personnel works in conjunction with the federal Mine Safety and Health Administration (MSHA) to insure the health and safety of miners.

## **SMART BUDGETING**

Since the board's functions are administered by the Department of Industrial Relations, there is no separate requirement for the board to participate in the SMART Budgeting program. No information relative to the Board of Examiners of Mine Personnel is included in the Department of Industrial Relations' SMART plans or reports.

## **FINANCIAL INFORMATION**

### **Schedule of Fees**

	<b>FEE</b>	<b>STATUTORY AUTHORITY</b>
Examination Fee for Mine Foremen and Fire Bosses	\$20.00	<i>Code of Alabama 1975</i> , Section 25-9-10
Replacement certificate	\$1.00	<i>Code of Alabama 1975</i> , Section 25-9-13

Operations of the Board of Examiners of Mine Personnel operations are funded by General Fund appropriations to the Department of Industrial Relations and not from collections of fees. Fees are deposited to the credit of the General Fund and are not available for use by the board. Disbursements for board related expenses are made from appropriations to a General Fund account of the Department of Industrial Relations. No balances are retained. The following table is presented only for comparison purposes.

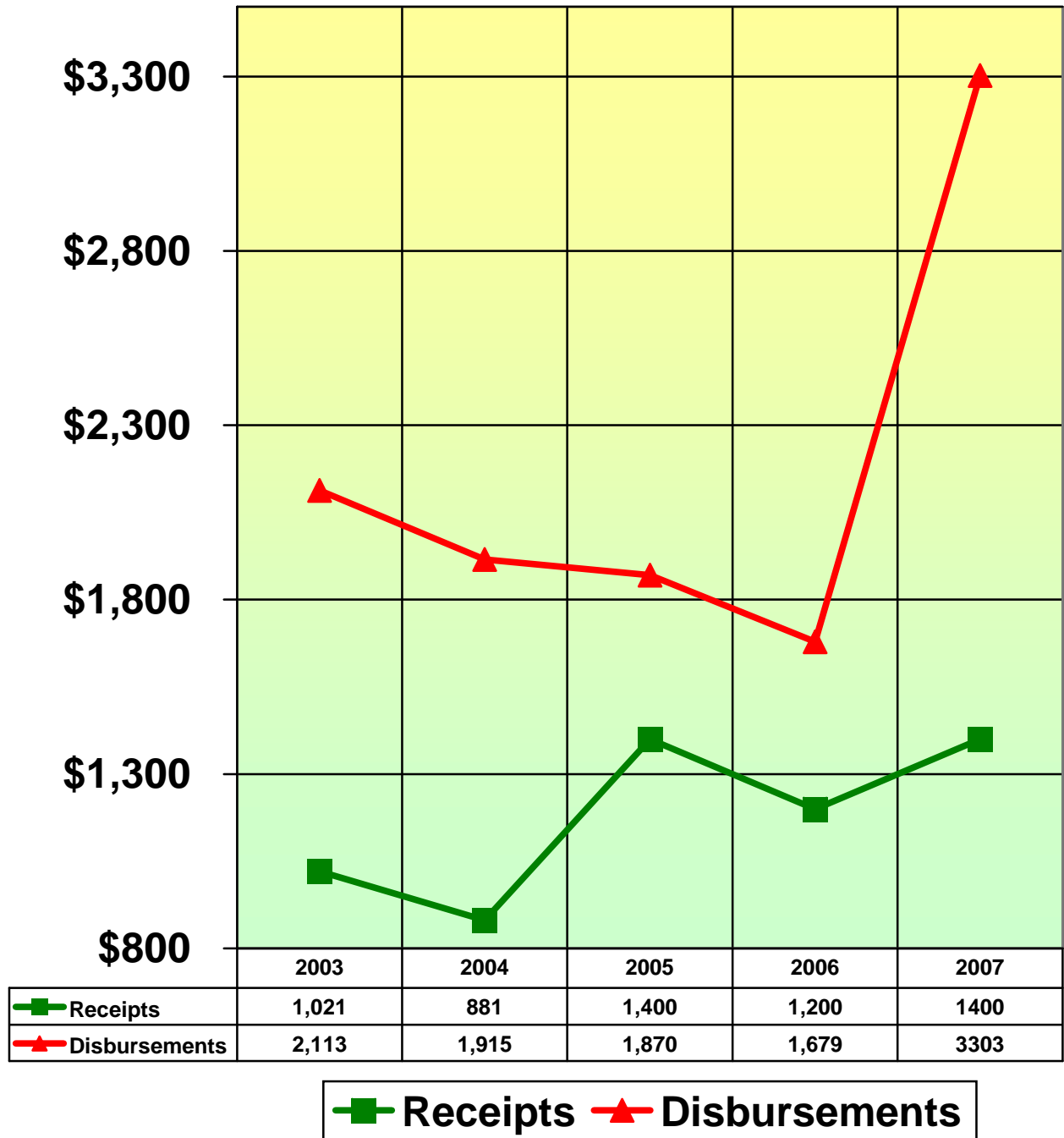
### **Comparison of Collections and Expenses**

For the Period October 1, 2002 through September 30, 2007

<b>Receipts</b>	<b>FY2007</b>	<b>FY2006</b>	<b>FY2005</b>	<b>FY2004</b>	<b>FY2003</b>
Examination Fees	\$1,400.00	\$1,200.00	\$1,400.00	\$880.00	\$1,020.00
Replacement Certificates				1.00	1.00
Total	1,400.00	1,200.00	1,400.00	881.00	1,021.00
<b>Disbursements</b>					
Board Member Compensation	570.00	380.00	320.00	482.30	472.30
Travel Expenses	2,732.78	1,298.95	1,549.63	1,432.56	1,640.61
Total	\$3,302.78	1,678.95	\$1,869.63	\$1,914.86	\$2,112.91

### Collections vs Expenses - Chart

For the Period October 1, 2002 through September 30, 2007





## **QUESTIONNAIRES**

### **Board Member Questionnaire**

Questionnaires were sent to the 8 board members; we received 5 responses.

1. Do you think a state run program regulating mine personnel is necessary to protect the public welfare?

\_\_\_5\_\_\_ Yes                      \_\_\_ \_\_\_ No                      \_\_\_ \_\_\_ Unknown

2. What is the most significant issue currently facing the Board of Examiners of Mine Personnel?

#1 "More inexperienced miners working in mines today, The older more experienced miners are retiring. New Miner Act."

#2 "The most significant issue facing the board is to create and administer an examination process that determines whether a candidate is adequately prepared to be a mine foreman. Mine safety is critical, and the mine examination that mine foremen do protect the lives of people working in each mine."

#3 "I don't know of any significant issues currently."

#4 "Raising minimum grade for pass/fail"

#5 "New operations that are opening up at a pace similar to the 1970's." "New inexperienced miners are being hired." "Young miners that have or will fulfill requirements to acquire Fire Boss and Mine Foreman certifications."

3. What is the Board doing to address this issue?

#1 "Upgrading mine foreman exams that reflect current mining procedures."

#2 "The board has updated and will continue to update the examination process so it is relevant to current mining law."

## ***Board Member Questionnaires***

#3 No response

#4 "Will be discussed in upcoming meeting in September."

#5 "Making changes to the Mine Foreman exam to reflect newer mining methods." "Making the ability to obtain certification more difficult which results in more qualified personnel."

4. Do you think the Alabama law pertaining to the regulation of mine personnel is adequate? If no, please explain.

  3   Yes                        2   No                             Unknown

#2 "The Alabama state mining law is very antiquated in comparison to Federal mining law."

#5 "The edition of law was in 1975. The mining industry has changed drastically since. The laws need to reflect all these changes."

5. Do you think the Board is adequately funded to carry out its purpose? If not, please explain.

  3   Yes                        2   No                             Unknown

#1 "Some board members are not paid by their companies when they attend meetings and tests. In these cases, state per diem, travel allowance, and the \$10/day payment do not adequately compensate these individuals for a day of lost wages."

#5 "I think that the next few years we will see a substantial increase in the number of persons seeking Fire Boss and Mine Foreman certification. We need to be ready for them."

**Certificate Holder Questionnaire**

Questionnaires were sent to 100 holders of fire boss or mine foreman certificates; we received 13 responses.

1. Do you think a state run program regulating the profession of mine foreman and fire bosses is necessary to protect the public welfare?

10 Yes                      3 No                      \_\_\_\_\_ Unknown

2. What is the most significant issue currently facing mine personnel today?

- #1 "Diesel"
- #2 "Roof & Rils & Methane"
- #3 "I think most Fire Bosses are just putting in their 8 hours. I think Fire Bosses should be tested at least every 2 years to keep their certification"
- #4 "The State of Alabama law needs to be updated. All parties need to be contacted (State, Company, Federal, Union firebosses & other firebosses). Hopefully a majority agreement between what should or should not be in the law can come out of this."
- #5 "Exposure to dust coal & rock."
- #6 "Working to many hours. When working 6 Days/week 10 to 12 hours/day people are not able to physically or mentally do their best job."
- #7 No Response
- #8 "Inadequate number of inspectors."
- #9 "Safety awareness"
- #10 "Numerous violations"
- #11 "On the job safety & trying to get the company to fix violations written in the fire boss book."
- #12 "Lack of training"
- #13 "long working hours"

3. What is the Board doing to address this issue?

- #1 "Allows Feds to address it."
- #2 "Not Sure"
- #3 "Nothing"
- #4 "My boss, who is on the board, showed me a draft sent to him on possible revisions to the law. They were asking his opinion on it. Nothing had been sent to me personally, so if my boss had not shown it to me I would not have known about this. The law affects all certificate holders, not just a few, so hopefully the word will get out better."
- #5 No Response
- #6 "Probably nothing"
- #7 No Response
- #8 "Unknown"
- #9 "Group meetings"
- #10 "They hired more inspectors"
- #11 "Unknown"
- #12 No Response
- #13 "nothing"

4. Do you think the Alabama law pertaining to the regulation of mine foreman and fire bosses is adequate? If no, please explain.

\_\_\_7\_\_\_ Yes                      \_\_\_6\_\_\_ No                      \_\_\_Unknown

- #3 "I think the minimum grade score should be raised. I have worked with many people through the years that has no business with mine certificates."
- #4 "The reason I say this is that in some areas State & Federal law differ on issues and can be confusing as to which one to follow. The State law needs to be updated as far as taking out such laws pertaining to mules & flame safety lamps for example."
- #6 "There are no regulation other than getting papers."
- #13 "because you need some kind of annual retraining"

*Certificate Holder Questionnaires*

5. Are you adequately informed of changes to and interpretations of board positions, policies, rules and laws concerning the practice of mine foreman and fire bosses in Alabama?

  3   Yes                       10  No                            Unknown

#3      "We should receive news letters."

6. Has any member of the Board or its staff asked you for money (other than normal fees), services or other things of value in return for licensure?

      Yes                       13  No                            Unknown

## **APPENDICES**

### **Statute**

## **CHAPTER 9. COAL MINE SAFETY.**

**§ 25-9-8. Certificate of competency for fire bosses and mine foremen -- Required.** *Current through End of 2006 Regular Session.*

(a) Except as otherwise provided in this chapter, no person shall act as fire boss in any coal mine in this state unless he is in possession of a certificate of competency.

(b) No person shall be employed as mine foreman in any coal mine in this state unless he is in possession of a certificate of competency as provided for in this article.

(Acts 1949, No. 207, p. 242, § 5.)

**§ 25-9-9. Certificate of competency for fire bosses and mine foremen -- Board of examiners.** *Current through End of 2006 Regular Session.*

There shall be appointed by the Governor a board of examiners, all of whom shall hold Alabama mine foreman's certificates, consisting of the chief or the head mine inspector, as the director may designate, together with three active practical miners, three operators of coal mines and one practicing mining engineer. The members of this board shall be appointed by the Governor and shall hold office for three years and until their successors are appointed and qualified, and, as nearly as possible, two members shall be appointed one year and three the succeeding year. No member of the board shall serve more than two consecutive terms of office. The chief or the head mine inspector shall be ex officio chairman of the board. The chairman shall vote only in the case of a tie vote, and, in the absence of one member of the board, a majority of whom shall act. In the event of the failure to have a quorum, the chairman shall have the authority to select a qualified person or persons. There shall be paid to each member of the board, except the ex officio chairman, who shall serve without extra pay, \$10.00 per day. Each board member shall also be entitled to the same per diem and travel allowance as is provided by law for state employees for each day's attendance at meetings of the board. Said board of examiners shall meet every six months at the office of the chief and shall remain in session not

longer than eight days, and special meetings may be called by the chairman or a majority of the members of said board. The department shall preserve in its office a record of the meetings and transactions of the board and all certificates issued and revoked.

(Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1; Acts 1981, No. 81-201, p. 242, § 4; Acts 1984, 2nd Ex. Sess., No. 85-15, p. 17, § 1; Acts 1988, No. 88-135, p. 194, § 3.)

**§ 25-9-10. Certificate of competency for fire bosses and mine foremen -- Examinations; fees.** *Current through End of 2006 Regular Session.*

The board of examiners created by Section 25-9-9 shall examine qualified applicants and give certificates of competency to persons who pass the required examinations to act as mine foremen or fire bosses in any coal mine in this state. A fee to be established by the board, not to exceed \$20.00, shall be charged for each examination given by the board, and such fee shall be paid to the Treasury of the state before the examination is begun. The examinations shall be conducted under such uniform rules, conditions and regulations as the board shall deem most efficient for carrying into effect the spirit and intent of this chapter. Such rules, when formulated, shall be made a part of the permanent record of the board, and such of them as relate to candidates shall be published for their information and governance prior to each examination. Such rules shall be of uniform application to all candidates.

(Acts 1949, No. 207, p. 242, § 4; Acts 1981, No. 81-201, p. 242, § 4.)

**§ 25-9-11. Certificate of competency for fire bosses and mine foremen -- Qualifications of applicants -- Mine foreman.** *Current through End of 2006 Regular Session.*

Each applicant for a mine foreman's certificate of competency shall:

(1) Be a citizen of the United States;

(2) Be at least 23 years old;

(3) Have had four years practical mining experience or have had three years practical experience in or around coal mines and be a graduate of a school accredited by the American Association of Universities or have satisfactorily completed an associate degree program in mine technology at an approved state trade school or university;

(4) Present with his application an affidavit of his meeting the foregoing requirements and of his good moral character and known temperate habits, which affidavit shall be signed by three reputable citizens, at least one of whom shall be the holder of a mine foreman's certificate; and

(5) Present with his application an affidavit that he is not a member of any political party or organization that advocates the overthrow of the government of the United States by force. (Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

**§ 25-9-12. Certificate of competency for fire bosses and mine foremen -- Qualifications of applicants -- Fire boss.** *Current through End of 2006 Regular Session.*

Each applicant for a fire boss's certificate of competency shall meet the same qualifications as those for a mine foreman; except that three years' practical experience in or around coal mines is substituted for the requirements of subdivision (3) of Section 25-9-11, and at least one of the persons signing the affidavit shall be holder of a fire boss's or a mine foreman's certificate. (Acts 1949, No. 207, p. 242, § 4; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

**§ 25-9-13. Certificate of competency for fire bosses and mine foremen -- Replacement of lost certificates.** *Current through End of 2006 Regular Session.*

In case of the loss or destruction of a certificate of competency, the department may supply a copy thereof to the person losing same upon the payment of \$1.00, provided that it shall be shown to the satisfaction of the department that the loss has actually occurred and that the loser was the holder of such certificate. (Acts 1949, No. 207, p. 242, § 4.)



**§ 25-9-14. Certificate of competency for fire bosses and mine foremen -- Forged or counterfeit certificates; uttering false certificates; false statements or misrepresentations in applications.** *Current through End of 2006 Regular Session.*

Any person who shall forge or counterfeit a certificate or knowingly make or cause to be made any false statement in any certificate of competency provided for in this chapter or in any official copy of the same, or who shall utter or use any false certificate or unofficial copy thereof or shall make, give, utter, produce or make use of any false declaration, representation or statement in any such certificate or copy thereof or any document containing the same or shall make any false statement or misrepresentation in his application before the examining board for any certificate, shall be guilty of a misdemeanor, and his certificate shall be cancelled or annulled by the examining board.

(Acts 1949, No. 207, p. 242, § 4.)

**§ 25-9-15. Certificate of competency for fire bosses and mine foremen -- Suspension, cancellation, or revocation; voluntary surrender of certificate.** *Current through End of 2006 Regular Session*

(a) The board may issue an official written reprimand of any person certified under this chapter as a disciplinary measure for a first violation of any requirement of this chapter.

(b) In addition, for any subsequent violation or for any serious first violation, the certificate of any person may be cancelled or revoked by the board of examiners, whenever it shall be established to the satisfaction of the board that the holder of the certificate has become unworthy of official endorsement by reason of violation of this chapter, intemperate habits, manifest incapacity, abuse of authority, or for other causes satisfactory to the board. Any person against whom charges are made shall have an opportunity to be heard in his or her own behalf. He or she shall have at least 30 days' notice in writing of the charges by the ex officio chairman, and, if the holder of a certificate is convicted on the hearing of the charge of violating any part of this chapter, his or her certificate shall be revoked by the board. The director, after a thorough investigation, may suspend the holder pending a meeting of the board of examiners and its final action.

(c) In addition to the reasons specified in subsection (b) for revocation of a certificate, a certificate holder may voluntarily surrender his or her certificate upon written request to the board for any reason acceptable to the board, and subsequent approval by the board. Pursuant to

administrative rule, the board shall specify those reasons that are acceptable to the board for the voluntary surrender of a certificate.

(Acts 1949, No. 207, p. 242, § 4; Acts 1988, No. 88-135, p. 194, § 3; Act 2004-72, p. 88, § 3.)

**§ 25-9-16. Failure of fire boss to perform required duties.** *Current through End of 2006 Regular Session*

Any fire boss in a mine who fails to perform any duty imposed on him by the laws of this state as fire boss shall be guilty of a misdemeanor.

(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

**§ 25-9-17. Persons authorized to act as fire boss; temporary fire boss or mine foreman.** *Current through End of 2006 Regular Session*

Except as otherwise provided in this chapter, no person shall act as fire boss in any coal mine in this state unless he is in possession of a certificate of competency. Anyone holding a mine foreman's certificate of competency may serve as fire boss. Whenever any exigency arises by which it is impossible for any operator, owner or lessee to secure the immediate service of a certified mine foreman or fire boss, he may employ a person who has the same qualifications by experience, concurred in by the chief or mine inspector delegated by the chief, to act as temporary mine foreman or fire boss for a period not to exceed 15 days. The requirements for a temporary mine foreman or fire boss shall be no more severe than those contained in federal regulations.

(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

**§ 25-9-18. Qualifications of mine foremen in underground mines.** *Current through End of 2006 Regular Session*

No person shall be employed as mine foreman in any underground coal mine in this state unless he is in possession of a certificate of competency as provided for in this chapter.

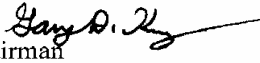
(Acts 1949, No. 207, p. 242, § 5; Acts 1975, 4th Ex. Sess., No. 147, p. 2866, § 1.)

## **Board Members**

June 12, 2007

### MEMORANDUM

TO: Examiners of Public Accounts

FROM: Gary D. Key   
Ex-Officio Chairman

SUBJECT: Board of Examiners of Mine Personnel

<u>Name &amp; Position</u>	<u>Address</u>	<u>Date Appointed</u>	<u>Term Expires</u>
Gary D. Key Ex-Officio Chm.	11 West Oxmoor Rd. S-201 Bham., AL 35209		Indefinite
Walt Owens Practical Miner	1335 Montg. Highway Centreville, AL 35042-2605	8-28-06	4-1-09
Bill Christians Mining Engineer	2505 Panorama Place Bham., AL 35216-3719	3-19-07	2-20-10
John Ingram Practical Miner	P.O. Box 2908 Jasper, AL 35202	3-19-07	2-20-10
Greg Franklin Operator	14015 Ashgrove Lane (Waiting for copy of letter Northport, AL 35475 from Governor)		
William R. Ganey Practical Miner	6881 Dogtown Rd. Nauvoo, Al 35578	6-30-05	2-20-08
Ed Sartain Operator	403 Southridge Rd. Jasper, AL 35504-7044	8-28-06	4-1-09
Gary Willoughby Operator	18616 Cty. Rd. 53 No. Winfield, Al 35594	6-30-05	2-20-08

## **RESPONSE TO SIGNIFICANT ITEMS**

**From:** Moss, Pat [Pat.Moss@dir.alabama.gov]  
**Sent:** Wednesday, October 03, 2007 9:19 AM  
**To:** John Norris  
**Cc:** Skates, Michael  
**Subject:** SUNSET REPORT - SIGNIFICANT ITEMS  
Dear Mr. Norris:

This e-mail is in response to your request to answer "significant items" as outlined in your e-mail dated September 24, 2007.

Response to Item 1:

The Board would not take exception of a non-U.S. citizen sitting for the test for mine foreman or fireboss certification. The Code of Alabama 25-9-11 would need to be amended to conform with U.S. Supreme Court Rulings in 1973 and 1976 dealing with a legal alien's right to lawful practice. Upon approval by Director Tom Surtees, the Board would work with Governmental Affairs Director Craig Donley to initiate the amendment process.

Response to Item 2:

With approval from Director Surtees, the Board would work with Governmental Affairs Director Craig Donley to specify by administrative rule that "individuals may voluntarily surrender a fireboss or mine foreman certificate upon written request and subsequent appearance before the board".

Response to Item 3:

We were not aware that board members had not received their economic interest statements. On 09-25-07, members were given the Statement of Economic Interest documents and informed to return the completed forms within 10 days. In the future, said documents will be provided to members when the electronic version is received at our Mine Safety office.

Response to Item 4:

Currently, board meetings and testing information are listed on the Secretary of State and Governor's web site, advertised in the local newspapers, and posted at each underground mine. Board information and/or minutes could be posted on the D.I.R. website.

Response to Item 5:

Raising the minimum grade requirement was discussed during the board meeting on 09-25-07. The testing period takes three days so there will be more discussions needed to properly adjust any proposed grading scale requirements.

Thank you for your assistance and attention to these items regarding mine safety.

Michael Skates